



SI-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक

G. A. 220/

सन् 2002

(33)

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	APPELLANT: (In Jail) RESPONDENT: {Appeal under Section 374 (2) of the Code of Criminal Procedure} Division Bench: Hon'ble Mr. L.C. Bhadoo and Hon'ble Mr. Sunil Kumar Sinha, JJ. 21-9-2007 Mr. Abhay Tiwari, counsel for the appellant. Mr. Satish Gupta, Deputy Govt. Advocate for the State/respondent. Oral judgment dictated on Dais. L.C. Bhadoo, J: - The accused/appellant has preferred this appeal against the judgment of conviction and order of sentence dated 31st January, 2002, passed by the 3rd Additional Sessions Judge, Ambikapur, in Sessions Trial No.404/2002, whereby learned Additional Sessions Judge after holding the accused/appellant guilty for commission of offence under Section 302 of the I.P.C., sentenced him to undergo imprisonment for life. Case of the prosecution, in brief, is that on the fateful day at about 5 p.m. Tirdhari (since deceased) was sitting in the courtyard of his house, at that time, accused Ram Awadh along with his son Dilwar came there and	Ram Awadha, S/o Nepal Yadav, aged 45 years, Occupation: Agriculture, R/o Kesara, P.S. Kamleshwarpur, District Surguja - Versus - State of Chhattisgarh

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आदेश पत्रक (पूर्वानुबन्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश - 2 -	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	said that his cow is damaging their crop daily, on which the deceased showed his innocence, whereupon on being asked by son of the appellant that the deceased be attacked, accused/appellant Ram Awadh took axe from his son and attacked Tirdhari on his chest as a result of which Tirdhari fell down and died. The matter was reported by Urvashi Bai (PW-1) to the Police Station on the same day on which F.I.R. Ex.P-1 was registered. Merg intimation Ex.P-2 was recorded. The Investigating Officer left for the scene of occurrence and prepared site plan Ex.P-3. Site Plan Ex.P-4 was prepared by the Patwari. The Investigating Officer after giving notice Ex.P-5 to the Panchas, prepared inquest Ex.P-6 on the body of Tirdhari. The accused gave memorandum Ex.P-7 during police custody and in pursuance of that axe was seized under Ex.P-8. Plain soil and blood stained soil were seized from the place of occurrence under Ex.P-10. Body of Tirdhari was sent for post-mortem examination to Government Hospital, Narmadapur under Ex.P-14 where Dr. V.P. Patel (PW-11) conducted post-mortem and opined that cause of death of Tirdhari was as a result of severe bleeding and shock, nature of death was homicidal. He prepared report Ex.P-19. Seized articles were sent to Forensic Science Laboratory, Sagar, from where report Ex.P-15 was received. Serologist report Ex.P-19 was also received. After completion of investigation, charge sheet was filed in the Court of Chief Judicial Magistrate, Ambikapur, who in turn committed the case to the Sessions Judge, Surguja, from where learned 3rd Additional Sessions Judge, Ambikapur, received the case on transfer for trial.	

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आदेश पत्रक (पूर्वानुबद्ध)

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	The prosecution in order to establish charge against the accused examined 11 witnesses. Statement of the accused was recorded under Section 313 of the Cr.P.C. in which either he pleaded innocence or denied the material appearing against him in the prosecution evidence. He further stated that on the fateful day the cow of Tirdhari was grazing his standing crop, he asked Tirdhari to keep his cow tied, when he said that his cow is damaging his crop, Tirdhari became angry and denied that his cow has damaged the crop and started quarrelling, when he resisted, deceased Tirdhari came and attacked him with Lathi on his head, in order to save himself he started moving the axe in the air and Tirdhari ran towards him to attack him, in that process the axe hit on the chest of Tirdhari. In his defence, he has examined Beldo Sai (DW-1), Dr. V.P. Patel (DW-2), Parvati (DW-3) & Kanhaiya Lal Yadav (DW-4). Learned Additional Sessions Judge after hearing the arguments of counsel for respective parties, convicted and sentenced the accused/ appellant as aforementioned. We have heard Mr. Abhay Tiwari, learned counsel for the appellant and Mr. Satish Gupta, learned Deputy Govt. Advocate on behalf of the State/ respondent. Mr. Tiwari has not disputed the homicidal death of Tirdhari. Moreover, Dr. V.P. Patel (PW-11) who conducted post-mortem on the body of Tirdhari has stated in his evidence that he conducted post-mortem on 10-10-2000 on the body of Tirdhari, there was a stab wound in the size of 9 cms. long, 4 cms. in width obliquely placed on chest cutting sternum as a result of which 3rd, 4th, 5th & 6th ribs were fractured, 7th rib was half cut and blood vessels	

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आदेश पत्रक (पूर्वानुबद्ध)

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	were also cut. He has stated that cause of death was on account of haemorrhage and shock, death was homicidal in nature. In view the ocular evidence of Urvashi Bai (PW-1) and medical evidence of Dr. V.P. Patel (PW-11), it is established that the death of Tirdhari was homicidal in nature. As far as involvement of the accused/appellant in attacking the deceased is concerned, Mr. Tiwari has not challenged this aspect of the judgment of the trial Court. Moreover, Urvashi Bai (PW-1), wife of the deceased has stated in her evidence that on the fateful day at about 5 p.m. she along with her husband were at their residence, at that time, accused Ram Awadh along with his son Dilwar came to their house and said that his cattle is damaging their crop on which her husband said which crop is damaged by the cattle, whereupon accused Ram Awadh said that "you are talking too much". Dilwar asked him to attack Tirdhari on which Ram Awadh took axe from the hand of Dilwar and attacked with the said axe on the chest of her husband, on which she started crying. Hearing her cries, her son reached on the spot and Dilwar attacked him also with Lathi. In her cross-examination, defence has not been able to elicit any circumstance which discredits the evidence of this witness. Chhotelal (PW-2) has also stated in his evidence that on the fateful day at about 5 p.m. he was at his residence, he heard cries from the house of Tirdhari, therefore, he went there and saw that Ram Awadh & Dilwar were coming out from the house of Tirdhari, Tirdhari was lying in the courtyard of his house, he was writhing in pain, his body was drenched with blood, he enquired from Tirdhari as to what has happened on which Tirdhari replied that Ram Awadh attacked him with axe and he will not survive. Then he saw	

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आदेश पत्रक (पूर्वानुबद्ध)

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	that Vinod & Urvashi were taking care of Tirdhari. There was injury on the chest of Tirdhari. Therefore, the ocular evidence of Urvashi Bai (PW-1) is corroborated by the evidence of Chhotelal (PW-2) before whom Tirdhari made oral dying declaration. Moreover, Chhotelal saw the accused persons going out of the house of deceased. Hence, involvement of the accused/appellant in attacking Tirdhari is established and to this extent we do not find any illegality or infirmity in the judgment of the trial Court. Mr. Abay Tiwari, learned counsel for the appellant, argued that on facts the prosecution has not been able to establish that the accused attacked the deceased with intention to cause his death. Moreover, when cow of the deceased was damaging the crop of accused Ram Awadh, Ram Awadh took the cow to the house of Tirdhari, when Ram Awadh complained about the damage done to his crop, Tirdhari refused that his cow has not damaged the crop, some altercation took place and in that process, in a heat of passion in a sudden fight, the accused snatched axe from his son and all of a sudden attacked Tirdhari who was none else than real brother of the accused/appellant. Learned counsel submitted that therefore, offence against the accused/appellant does not travel beyond Section 304 Part-I of the I.P.C. On the other hand, learned Deputy Govt. Advocate supported the judgment of the trial Court. Facts of the case are almost admitted. It is admitted fact that the deceased was real brother of the accused/appellant. On the fateful day cow	

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आदेश पत्रक (पूर्वानुबद्ध)

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	of Tirdhari entered the standing crop of the accused, when the accused saw that the cow of Tirdhari was damaging his crop, he brought the cow to the residence of Tirdhari and complained that the cow of Tirdhari is damaging his crop, on which Tirdhari replied which crop was damaged by the cow, in that process some altercation took place and in a heat of passion all of a sudden, without any preparation & pre plan the accused snatched the axe which was in the hands of Dilwar, his son, and attacked the deceased. In view of the above facts, we are of the considered opinion that offence against the accused does not travel beyond Section 304 Part-I of the I.P.C. In the result, the appeal of the appellant partly succeeds. Conviction and sentences imposed upon the accused/appellant under Section 302 of the I.P.C. are set aside and he is acquitted of the said charge, instead thereof, the appellant is convicted under Section 304 Part-I of the I.P.C. and sentenced to undergo R.I. for ten years. The accused is said to be in detention since 9-10-2000 till today, therefore, he shall be entitled for set off of the above detention period imposed upon him.	
Soma	Sd/- L.C. Bhadoo Judge	Sd/- Sunil Kumar Sinha Judge